

REMARKS/ARGUMENTS

In light of the above amendments and remarks to follow, reconsideration and allowance of this application are respectfully requested.

Claims 1, 3-4, 7, 9-10, 12-13, 15 and 17-19 have been amended. Claims 5-6 have been canceled, without prejudice. Claim 20 has been added. Claims 1-4, 7, 9-10 and 12-20 are pending.

The Examiner objected to the drawings for not showing every feature of the invention specified in the claims. Claim 4 has been amended, and claim 5 has been canceled, such that the "thread pitch" and "means for clipping the removable module" are not recited in the pending claims. Accordingly, based on the amendment of claim 4 and cancelation of claim 5, the objections to the drawings have been overcome and should be withdrawn.

Claims 1 and 4-5 were rejected under 35 U.S.C. § 112 ("Section 112"), first paragraph, for failing to comply with the written description requirement because they contain new matter. Claims 1 and 4 have been amended to delete the wording that formed the basis for the Examiner's rejection, and claim 5 has been canceled. Accordingly, based on the amendment of claims 1 and 4 and the cancelation of claim 5, the objections to the drawings have been overcome and should be withdrawn.

Claims 1-4 and 6 were rejected under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent Pubn. No. 2003/0066527 ("Chen") in view of U.S. Patent Pubn. 2003/01792930 ("Kullik"). In addition, claim 5 was rejected under 35 U.S.C. § 103(a) as being unpatentable over Chen in view of Kullik and U.S. Patent No. 6,349,964 ("Schoelz"). Further, claims 1, 7, 9-10, 12-14 and 18-19 were rejected under 35 U.S.C. § 103(a) as being obvious over Kullik in view of U.S. Patent No. 6,382,208

("Reedy"); and claims 15-17 were rejected under 35 U.S.C. § 103(a) as being obvious over Kullik in view of Reedy and U.S. Patent No. 6,050,262 ("Jay").

Independent claim 1, as amended, is directed to a breathing assistance device including, in relevant part, a gas source which is a ventilator having at least an inlet rotor (see specification, for example, pg. 9, ln. 1-13 and FIG. 3a), where the ventilator is integrated into a removable module removably connectable to a breathing connection. (See specification, for example, at pg. 12, ln. 11-13 and 24-25, pg. 10, ln. 28-30 and FIGs. 2 and 4a). Also, claim 1 recites that the breathing connection is a mask, such that the removable module is directly connectable to the mask. (See specification, for example, at pg. 12, ln. 11-18 and 24-25 and pg. 10, ln. 27-30 and FIGs. 2 and 4a). In addition, claim 1 requires "at least one sensor for acquiring a parameter representative of the operation of the device," and that the sensor is located in the removable module at a position downstream of the inlet rotor of the ventilator. (See specification, for example, at pg. 10, ln. 1-2 and 13-16, and FIG. 2). Further, claim 1 requires a central control unit for operating the device in at least one airway pressure ventilation mode based on information from the at least one sensor. (See specification, for example, at pg. 12, ln. 26-29, pg. 15, ln. 25-30, pg. 16, ln. 1-3, 15-17 and 28-29, and p. 4, ln. 23- pg. 5, ln. 9 and FIG. 4a).

Advantageously, in the inventive device, the sensor is positioned downstream of the inlet rotor of the ventilator which is integrated into the removable module (see specification, for example, at pg. 10, ln. 13-15 and pg. 8, ln. 5-6 and 10-14), such that heat released by the ventilator may reheat respiratory

gas passing into the sensors, thereby preventing condensation of gas near the sensors. (See specification, for example, at pg. 14, ln. 12-16).

The Examiner admitted in the Office Action (pg. 4, item 5) that Chen does not disclose a sensor for acquiring a parameter representative of operation of a breathing assistance device.

Kullik does not cure the deficiencies of Chen with respect to the requirements of the claimed invention, as described above. In the Office Action (see pg. 4, item 5), the Examiner relied upon Figure 2 of Kullik to find that Kullik discloses a sensor 10 in a rotary compressor (ventilator) 3. It is respectfully submitted, however, that Figure 2 of Kullik is a schematic view that does not specifically indicate the positioning of the sensor 10, and furthermore that paragraph [0018] of Kullik appears to disclose that the sensor 10 is "located in the breathing mask 2" of the Kullik device. Thus, Kullik does not appear to disclose or suggest a breathing assistance device having a sensor for acquiring a parameter representative of operation of the device in a removable module into which a ventilator is integrated, and that the sensor is located within the removable module at a position downstream of an inlet rotor of the ventilator, as required by claim 1. Further, Kullik does not appear to disclose or suggest operating a breathing device in at least one airway pressure ventilation mode, such as BPAP or CPAP, based on information from the sensor, as required by claim 1.

Accordingly, independent claim 1 is patentable over the applied combination of Chen and Kullik for at least the above reasons.

Claims 2-4 depend from claim 1. Accordingly, it is

also respectfully submitted that dependent claims 2-4 are distinguishable from the combination of Chen and Kullik as applied by the Examiner for at least the reasons previously described for claim 1, and also because of the additional restrictions they require.

Further, the Examiner does not rely upon Reedy, which appears to disclose a releasable jack for selectively disconnecting a power source from a respirator, to cure the deficiencies of Kullik described above, with respect to the requirements of claim 1. Accordingly, independent claim 1 is patentable over the combination of Kullik and Reedy applied by the Examiner for at least the above reasons.

Claims 7, 9-10, 12-14 and 18-19 depend from claim 1. Accordingly, it is also respectfully submitted that dependent claims 7, 9-10, 12-14 and 18-19 are distinguishable from the combination of Kullik and Reedy as applied by the Examiner for at least the reasons previously described for claim 1, and also because of the additional restrictions they require.

Further, claims 15-17 depend from independent claim 1. As a result, claims 15-17 are distinguishable from the combination of Kullik and Reedy as applied by the Examiner for at least the reasons previously described. In addition, the Examiner does not appear to rely on Jay to overcome the above-described deficiencies of the combination of Kullik and Reedy. Accordingly, it is also respectfully submitted that dependent claims 15-17 are distinguishable from the combination of Kullik, Reedy and Jay applied by the Examiner, for at least the reasons previously described.

In view of the above, each of the presently pending claims in this application is believed to be in immediate condition for allowance. Accordingly, the Examiner is respectfully requested to withdraw the outstanding rejection of

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the claims and to pass this application to issue.

If, however, for any reason the Examiner does not believe that such action can be taken at this time, it is respectfully requested that he/she telephone applicant's attorney at (908) 654-5000 in order to overcome any additional objections which he might have.

If there are any additional charges in connection with this requested amendment, the Examiner is authorized to charge Deposit Account No. 12-1095 therefor.

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Respectfully submitted,

By 

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